

From: David Merrill
To: Microsoft ATR
Date: 1/23/02 7:37pm
Subject: Microsoft Settlement

Greetings,

I hold a doctorate in Computer Science, and have been deeply involved in the software industry since its very beginnings in about 1983. I have been a user of Microsoft operating systems and application software for nearly 20 years now, and I have followed the industry very closely, especially Microsoft's unscrupulous and illegal activities against competitors.

This industry used to be vibrant, exciting, and dynamic. New and innovative products entered the market constantly, and there was lively competition in all product markets. Once Microsoft started signing exclusive deals with OEMs, that market started to die, and today it exists only in the UNIX and Linux markets.

I very much appreciate that the DOJ took on antitrust proceedings against Microsoft. After watching one competitor after another run out of the market by using OEMs, APIs and protocols as weapons, I hoped that finally the company would be forced to compete solely on the merits of its software, which alone are enough for it to maintain a strong position in the market - but not a monopoly.

Unfortunately, the proposed settlement, while it does address some anticompetitive behavior, does little to stop the primary weapons which Microsoft uses. The language and definitions are so narrow in scope that they would be easy for any competent software engineer to work around. I know I certainly could, and I am sure that Microsoft has engineers equally as talented.

It has "loophole" written all over it. Here are just a few:

There is no provision for making access to .NET and other future services open -- only Windows itself. In the next generation of its software, Windows will no longer be the lynchpin, but instead will be replaced by .NET as the "chokepoint". Any settlement which does not include future, even currently unannounced products is insufficient. Otherwise, all it takes is a single new piece of software, upon which other software is made to rely in the most trivial way, and we're back where we started.

The only API Microsoft is force to make public is the "Windows API", and only that small part of the API which is used by middleware. That doesn't include many of the important parts of the API, which would be required to develop Office software, network protocols, and multimedia,

such as installation routines, access to the Windows Registry, etc.

There is no requirement that file formats be documented, yet they are the primary way Microsoft maintains its monopoly in Office software. This is such a glaring omission I don't understand how it could have been overlooked, but apparently it was.

There is no requirement that any information be shared with nonprofit and volunteer organizations such as the developers of Linux, even though Linux is Microsoft's strongest potential competitor. This alone is a huge, gaping loophole.

The latest versions of some Microsoft software carry EULAs (End User License Agreements) which specifically state that they cannot be run on other operating systems than Windows. Could they be more brazen? And yet there is nothing in the agreement which prevents this - nor has the DOJ addressed the issue despite its prima facie anticompetitive nature.

There are dozens, perhaps hundreds, of other ways, large and small, that Microsoft threatens and bullies anyone else who tries to enter their markets, few of which are addressed in the agreement. These are but a few. A much longer list is contained in the longer document by Dan Kegel, a software engineer with as much time in the industry as I have.

I wholly endorse, support, and concur with his views, which have also been submitted for your review.

Regards,

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David C. Merrill	http://www.lupercalia.net
Linux Documentation Project	david@lupercalia.net
Collection Editor & Coordinator	http://www.linuxdoc.org

What had the Lady Jessica to sustain her in her time of trial? Think you carefully on this Bene Gesserit proverb and perhaps you will see: "Any road followed precisely to its end leads precisely nowhere. Climb the mountain just a little bit to test that it's a mountain. From the top of the mountain, you cannot see the mountain."

-- from "Muad'Dib: Family Commentaries"
by the Princess Irulan